CF0000058336

(2)

Division Bench (Crim

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Cr.Appeal No. 1449 OF 1995.

Subhash Jaiswal, S/o Ram Chand
Jaiswal, aged 37 years, R/o
Amarkantak Road,
Gaurrela, Distt. Bilaspur.

... APPELLANT

Vs.

The State of Madhya Pradesh

... RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

OFFICE OF THE ADVOCATE GENERAL
Regn No. 4230

XI-HC-22

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**Division Bench: -**

**Hon'ble Mr. L.C. Bhadoo and**
**Hon'ble Mr. Dhirendra Mishra, JJ.**

**14-2-2006**

Mr. Neeraj Mehta, counsel for the appellant.

Mr. J.D. Bajpayee & Mr. U.N.S. Deo, Additional Public Prosecutors with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on Dais.

**Per L.C. Bhadoo, J: -**

Appellant Subhash Jaiswal has preferred this appeal under Section 374 (2) of the Code of Criminal Procedure questioning legality and correctness of the judgment of conviction and order of sentence dated 31st August, 1995 passed by the 3rd Additional Sessions Judge, Bilaspur, in Sessions Trial No.200/1995, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the murder of his wife Usha Lata convicted him under Section 302 of the I.P.C. and sentenced to undergo imprisonment for life and pay a fine of Rs.3,000/-, in default of payment of fine to further undergo R.I. for one year.

Case of the prosecution, in brief, is that Suresh Kumar Sharma (PW-1) lodged the report (Ex.P-1) in Police Station: Gaurela on 8-1-1993 at about 8.15 p.m. to the effect that on 8-1-1993 at about 6 p.m. he was taking brunch in the hotel of Ramjivan Jaiswal, at that time he heard noise from the side of the house of Subhash Jaiswal, Dr. Bengali of Chandsi Clinic asked him to bring auto rickshaw as the wife of Subhash is serious on which he immediately brought the auto, thereafter, he along with Chhabilal Sahu went inside the

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house of Subhash and saw that the wife of Subhash was lying on the floor in the pool of blood, her brain material was coming out on account of head injuries and blood was oozing out of the injuries. At that time, the mother of accused Subhash raised cries that Subhash has assaulted her daughter-in-law with grinding stone, save her. Daughter and son of accused Subhash stated that their father has murdered their mummy, save mummy. Saroj, sister of accused Subhash, said that after closing the door from inside, his brother has murdered his wife. Dr. Gupta came and declared Usha dead.

On receiving this report, the Station House Officer registered the offence under Section 302 of the I.P.C. and left for the scene of occurrence. After giving notice to the Panchas, he prepared the Panchnama (Ex.P-2) of the dead body of Usha. Under Ex.P-3, he took into possession blood stained pieces and plain pieces of the floor. Site Plan (Ex.P-6) of the place of occurrence was got prepared from the Patwari. Clothes of the deceased sent in a packet by the doctor of the hospital were taken into possession under Ex.P-7. Letter (Ex.P-8) written by the accused on 27-6-1989 to his father-in-law Daya Shanker along with the envelope (Ex.P-9) and one letter (Ex.P-10) written by deceased Usha to her brother Narendra were taken into possession under Ex.P-11. The body of Usha was sent for post-mortem examination to the Civil Hospital, Pendra under Ex.P-12. After conducting post-mortem, Dr. R.C. Mishra prepared the post-mortem report (Ex.P-14). While in police custody, the accused gave information (Ex.P-19) under Section 27 of the Indian Evidence Act regarding the place where he concealed the grinding stone and in pursuance of that, the grinding stone was taken into possession under Ex.P-21 at the instance of the accused. The grinding stone was sent to the doctor of Civil Hospital, Pendra, under Ex.P-15 for examination on which

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the doctor gave his opinion under Ex.P-16 and opined that the injuries mentioned in the post-mortem report can be caused by this stone. Clothes of the accused were taken into possession under Ex.P-18 on production by the accused. Merg intimation Ex.P-24 was given by Suresh Sharma (PW-1). Site inspection Panchnama (Ex.P-25) of the place of occurrence was prepared by the Investigating Officer. Site plan (Ex.P-26) was also prepared by the Investigating Officer. The stone was taken into possession under Ex.P-27. Seized articles were sent for chemical examination to the Forensic Science Laboratory, Raipur, from where reports Exs.P-33, P-34 & P-35 were received. One letter (Ex.P-37) written by Lakshmi on 16-1-1992 was taken into possession.

After completion of investigation, charge sheet for commission of offence under Section 302 of the I.P.C. was filed against the accused/ appellant in the Court of Judicial Magistrate, First Class, Pendra Road, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned 3rd Additional Sessions Judge, Bilaspur, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined as many as 14 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material evidence appearing against him and stated that he has been falsely implicated in the crime. The accused has further stated that he never quarreled with his wife, they used to remain peacefully and his brother-in-law borrowed money from him, when he demanded the money back and the same was refused, in order to pressurize him, false case has been cooked up against him.

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Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. Neeraj Mehta, learned counsel for the appellant and Mr. J.D. Bajpayee & Mr. U.N.S. Deo, learned Additional Public Prosecutors with Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of Usha Lata is not in dispute.

In this case, almost all the witnesses i.e. son & daughter of the accused and the deceased and other witnesses have turned hostile. Case of the prosecution rests on the circumstantial evidence. In order to rest conviction based on the circumstantial evidence, as per the settled law, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

Now, we shall proceed to examine the evidence available on record and see whether the prosecution has been able to connect the accused with the crime in question based on the circumstantial evidence. The prosecution has tried to establish the case on the following circumstances: -

1. At the time of commission of crime, the accused was in the house along with his wife.

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2. Blood stained clothes of the accused were taken into possession.
3. The weapon of offence was taken into possession at the instance of the accused leading to the information given by him under Section 27 of the Indian Evidence Act.
4. Previous conduct of the accused.

As far as the circumstance (1) is concerned, Suresh Kumar Sharma (PW-1) has stated in his evidence that on the fateful day he was taking brunch at the hotel of Ramjiyavan Jaiswal which is adjacent to the house of the accused, he heard noise from the side of the appellant's house, therefore, they went towards that side, Dr. Bengali of Chandsi Clinic said that accused Subhash has assaulted his wife bring the auto rickshaw, on which he & Chhabilal Sahu brought the auto rickshaw and went to the house of the accused, where accused Subhash Jaiswal met and said that take his wife to the hospital and save her. Thereafter, they entered the house of the accused where wife of the accused was lying in injured condition in pool of blood. Kum. Lakshmi Jaiswal (PW-3), daughter of deceased & accused, in para 3 of her evidence has stated that on 8-1-1993 at about 6 p.m. she along with her mother and brother Yashwant were in the house, it is correct to say that at that time his father came, her mother was folding the clothes, therefore, her father enquired from her mother "Where are you going?", on which she replied where she will go leaving him. On this, her father said, "No, it seems that you are going to Manendragarh to your parental house". Even though this witness has turned hostile, but from this evidence, it is established that when the crime in question was committed the accused was at his residence. These witnesses were not cross-examined to the effect that the accused was not present in his

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house at the time of commission of crime. Even in his statement under Section 313 of the Cr.P.C., he has simply stated that he has been falsely implicated in the crime by his brother-in-law on the ground of animosity. In reply to question No.19, he has stated that he was not at his residence. As has been mentioned above, on this aspect, the witnesses have not been cross-examined. Therefore, there is no reason to disbelieve Suresh Kumar Sharma (PW-1) and Kum. Lakshmi Jaiswal (PW-3).

The injury report and the evidence of Dr. R.C. Mishra (PW-8) show that deceased Usha Lata received following injuries: -

1. One lacerated wound in the size of 10 x 4 x 3 cms. on left parietal region, margins of the wound were irregular, blood was oozing out of it and left parietal bone was fractured.
2. One lacerated wound in the size of 10 x 3 x 2 cms. on right temporal region, blood was oozing out of it and right temporal bone was fractured.
3. One lacerated wound in the size of 6 x 4 x 2 cms. on occipital region, blood was oozing out of it and occipital bone turned into pieces.
4. One contusion in the size of 2.5 x 1.5 x 1 cms. on left elbow red in colour.

On opening the head, it was found that parietal & occipital bones were fractured and bleeding in the brain membrane was present. In the opinion of the doctor, the injuries were ante-mortem in nature and were caused with a blunt object. The death of deceased Usha Lata was homicidal in nature. He has further stated he examined the grinding stone, which was sent by the

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S.H.O. for examination, and it was possible to cause the injuries, which were found on the head of the deceased by the said grinding stone. His report is Ex.P-16.

Therefore, when presence of the accused is established, his wife received so many homicidal injuries on head and there is no explanation coming from the accused as to how she received the injuries, no other person was present in the house of the accused, a reasonable inference can be drawn on the basis of presence of the accused and other circumstances which are to be discussed later on that the accused was the author of the injuries in question.

As far as the circumstance (2) is concerned, Sitaram Singh (PW-14), Investigating Officer, has stated in his evidence that blood stained clothes were taken into possession under Ex.P-18. He has further stated that on 9-1-1993 on being produced by accused Subhash Jaiswal, one terricot open shirt and one terricot full pant stained with blood were taken into possession under Ex.P-18. Amarchand Jaiswal (PW-10) has stated in his evidence that the police took into possession clothes of the accused under Ex.P-18 and his signature is in between 'A' to 'A' place. There is no explanation of the accused as to how his clothes were stained with blood. Therefore, recovery of blood stained clothes of the accused under Ex.P-18 is established.

As per the F.S.L. report Ex.P-34, blood was found on shirt & pant of the accused. It is true that in this case, the Serologist's report is not there. But this is not the only circumstance based on which the accused is said to be connected with the crime in question. This circumstance is being taken into

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aid as an additional circumstance to connect the accused with the crime. As has been held by the Apex Court in the matter of **State of Rajasthan vs. Teja Ram and others** reported in **(1999) 3 SCC 507**

> "Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all.
>
> It cannot be said that in all cases where there was failure of detecting the origin of the blood, the circumstance arising from recovery of the weapon would stand relegated to disutility."

As far as the circumstance (3) is concerned, Sitaram Singh (PW-14), Investigating Officer, has stated in his evidence that on 9-1-1993 the accused gave memorandum Ex.P-19 under Section 27 of the Indian Evidence Act regarding the grinding stone and stated that he threw the grinding stone, the weapon of offence, in a well which is existing behind his house and he can get the same recovered. Thereafter, the accused went inside the well, brought the grinding stone and the Panchanama (Ex.P-21) was prepared, on being production of the stone, same was taken into possession under Ex.P-27. Seizure witness Ramadhar (PW-12), even though has turned hostile, has not supported the Panchnama, but has stated that the accused took the Police to his house from where he took the Police to the well, other persons were also standing and Ex.P-21, the Panchanama bears his signature. One person went inside the well and brought the stone. But, this witness has not supported the case of the prosecution. However, there is no reason to disbelieve the evidence of Sitaram Singh (PW-14), Investigating Officer. Dr. R.C. Sharma (PW-8) has stated that the stone in question was examined by him on the request of the S.H.O. and the injuries which were found on the

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head of deceased Usha Lata could possibly be caused by the stone in question. Therefore, the weapon of offence by which injuries were caused was taken into possession at the instance of the accused.

As far as the circumstance (4) is concerned, in this case, one letter (Ex.P-8) was written by the accused on 27-6-1989 and one letter (Ex.P-10) was written by the deceased to his brother Nagendra Kumar Jaiswal. Ravindra Kumar Jaiswal (PW-13), brother of the deceased has been examined and he has stated in his evidence that the letter Ex.P-10 was written by his sister and the letter Ex.P-8 was written by the accused. Reading of these letters shows that relation between the accused and the deceased were not cordial. In Ex.P-8 the accused even went to the extent that if the father or any relation of Usha insist for taking Usha to their place, then he can go up to the extent of committing her murder, they should never ask for sending Usha to their place. Ex.P-10, the letter written by Usha, also shows that the accused used to harass her. Even though, these letters are 4-5 years old, but shows that relation between the accused and the deceased were never cordial.

In view of the above circumstances that the accused & the deceased were not maintaining cordial relations, on the fateful day the accused was present in the house and deceased Usha was found in a pool of blood receiving serious injuries on head and nobody else was present in the house, clothes of the accused were found stained with blood, similarly, the weapon of offence i.e. stone was taken into possession at the instance of the accused, the cumulative effect of which is the irresistible inference that the accused was the only person who was the author of the crime in question and there was no

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chance of coming any third person in committing the crime in question. Therefore, we are of the considered opinion that the circumstantial evidence produced by the prosecution points towards the involvement of the accused in the crime in question.

Learned counsel for the appellant argued that from the evidence of Kum. Lakshmi (PW-3) it has come on record that at the fateful time when the deceased was folding her clothes, making preparation, the accused came and enquired from her as to where she is going on which she replied that where she will go leaving him, that enraged the accused because reply of the deceased was in a sarcastic manner, the accused could not control his temper and in a heat of passion he picked up the stone and assaulted with the same on the head of the deceased. Therefore, the matter is covered under Exception 4 to Section 300 of the I.P.C.

On the other hand, learned Additional Public Prosecutors supported the trial Court judgment.

As per the settled law, where it is difficult to bring direct evidence of intention of the accused, then same can be gathered from the circumstances and background in which the offence was committed, nature of injuries found on the body of the deceased, nature of the weapon used by the accused/ appellant and part of the body where the injuries were inflicted. The argument advanced by learned counsel for the appellant does not sound to the reason because on such reply in the first instance how it can be taken as sarcastic reply. When the deceased said that where she will go leaving him, it cannot be taken as a circumstance which enraged or infuriated the accused to the extent to assault her with a stone repeatedly for 3-4 times on her head vital

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part of the body. He repeatedly assaulted on the head of the deceased so mercilessly that even the skull was torn into pieces, right parietal bone & occipital bone were fractured and brain material was coming out. This makes the intention of the accused clear that he assaulted the deceased with intention to cause her death. Therefore, we do not find any substance in the argument of learned counsel for the appellant.

In the result, the appeal has no force, same being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Consequently, M.(Cri.)P.No.889/2000 stands disposed of.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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